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EXAMINER
DURAN, ARTHUR D

ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/695,590	GOLDMAN ET AL.
	Examiner	Art Unit
	Arthur Duran	3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _28 November 2005_.

2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _41,42 and 109-124_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _41,42 and 109-124_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 41, 42, and 109-124 have been examined.

Response to Amendment

2.   The Amendment filed on 11/28/05 is sufficient to overcome the prior rejection. A new reference has been added to the 35 USC 103 rejection.

Claim Rejections - 35 USC § 112

3.   Claim 41, 42, and 109-124 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Independent Claim 41 states 'future customer coupons not presently redeemable'. Applicant's Amendment dated 11/28/05 states that support for this feature can be found at page 17 of the Applicant's Specification. While Applicant's Specification on page 17 discloses a future coupon, it does not disclose the feature concerning that the future coupons are not presently redeemable. A future coupon can merely be a coupon that is valid from the present and onward or a coupon that can be used in the future.

As noted in the Barnett (6,321,208) Specification, Barnett discloses future coupons, "Some consumers use coupons on a fairly random basis. These consumers tend not to keep coupons for <u>future</u> use, but will review coupons available just prior to shopping to see if any of

them cover products they plan to buy or if there are any for new or improved products of

interest. More organized coupon users maintain some form of storage system to keep coupons

for future use. These consumers often clip coupons regularly from all available sources, and

often have coupon filing systems by product category. They will also review their coupons

regularly, discarding unused coupons which have expired" (col 1, lines 31-45).

Also, as noted in the Applicant's Amendment dated 11/28/05, Applicant states that

Barnett does not disclose future coupons where the future coupons are not presently

redeemable. However, while Applicant's Specification on page 17, like the Barnett patent,

supports future coupons, Applicant's Specification on page 17 does not support 'future coupons

not presently redeemable'.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

4.   Claims 41, 42, and 109-124 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Sloane (6,434,530) in view of Barnett (6,321,208) in view of Fajkowski (5,905,246).

Sloane discloses wireless device and bar code scanning:

"(23) The apparatus can further comprise a bar code scanner. The apparatus can be

adapted for selectively mounting on a shopping cart and for being carried by the shopper (col 3,

lines 49-52);

(24) The system can further comprise a plurality of the mobile interactive apparatus adapted for storage in a rack, the apparatus being adapted for the mobile use upon selective removal from the rack (col 3, lines 52-56);

(25) The system can further comprise a rack for storing a plurality of the mobile interactive apparatus, each apparatus being adapted for the mobile use upon selective removal from the rack (col 3, lines 55-60);

(8) The base station 40 is provided with a <u>wireless</u> transceiver 408 having an antenna 410. The base station can communicate with the <u>wireless</u> transceiver 408 through a communications link 18. The <u>wireless</u> transceiver 408 can communicate with a help desk station 80 through a communications link 82. Different frequencies can be used to communicate with respective apparatus 10, or other multiplexing data transmission schemes can be employed (col 6, lines 20-37);

(20) The base station communicates with each apparatus 20 by a <u>wireless</u> communications link 18" (col 9, lines 30-35).

Sloane discloses targeting a user including targeting a particular user and also profiling a user:

"(3) The invention relates generally to the fields of shopping and advertising, and in particular, to an interactive shopping system which can provide shoppers with useful product information for assisting the shopper at the time and place of article selection, and which can also provide promotions and discounts from a marketing and advertising campaign <u>targeted</u> for influencing the shoppers' choices at the time and place of article selection (col 1, lines 11-20).

(19) In a commercial sense, the interactive shopping system 10 can be exploited for marketing purposes and efforts to direct shopper's habits and selections with respect to articles selected for purchase. Marketing efforts can be directed not only to specific shopping venues but to specific classes of shoppers at each shopping venue, because each shopper is provided with his or her own apparatus 20 while shopping. Indeed, it would be possible to target specific shoppers (col 9, lines 15-25);

(10) With respect to cost, a recipe can even be selected on the basis of the maximum cost savings of ingredients, with regard to ingredients on sale or associated with coupons. As a specific example, a shopper can request a recipe, filled by the least expensive ingredients available, for an Italian style meal including eggplant, pasta, low fat tomato sauce and fat free cheese. In this case, the requirements for low fat tomato sauce and fat free cheese can eliminate from consideration tomato sauces and cheeses which are less expensive but do not satisfy the low fat and fat free criteria. Additional ingredients which might be necessary for the recipe, for example bread crumbs, can be included in the suggested shopping list, even if those ingredients were not specified in the query. Whether or not a recommended brand of bread crumbs would be based on cost or on fat content, or both, for example, can depend upon the shopper's personal profile if no pertinent criteria are included in the query. If sufficient criteria are not available in the personal profile or in the query, the AIU 406 can make the selection based on default rules, for example, based on the shopper's choices of articles already selected during shopping. A similar procedure would be undertaken, for example, if eggs or egg substitutes were required. Moreover, the AIU 406 has access to the list of articles selected by the shopper and can determine if any of the ingredients have already been placed in the shopper's

cart. Default procedures can be utilized in the absence of information in the shopper's personal

profile. A neural network is especially adapted for such kinds of processing, and in the

presently preferred embodiment, AIU 406 is a neural network" (col 7, lines 25-55).

Sloane discloses presenting specialized information when items are scanned and also that

items a user scans is recorded and the long term history of items purchased is tracked:

"(27) The artificial intelligence unit can generate, for example, one or more of the

following: a shopping list responsive to an audible customer query; warnings when values of

data in the information supplied to the shopper for shopper-selected articles is out of a

predetermined range; price and/or price advisories based on shopper-selected articles; and, a

tutorial running concurrently and intermittently with selection of the articles. Parts of the

tutorial can be initiated by scanning the articles (col 4, lines 5-15);

(21) These buttons can be used, for example, in conjunction with a bar code scanner 218

to update and revise the electronic list of articles selected and scanned for purchase as

such articles are placed into the shopper's shopping cart. The bar code scanner can be activated

by buttons 220 and 222. Buttons 212, 214 and 216 are generically labeled for three functions

F1, F2 and F3 respectively (col 9, lines 55-65);

(24) In the environment of a shopping venue for an automobile dealership, the

mobile apparatus can enable shoppers to roam through a lot, and be supplied with information

regarding cars which are scanned while roaming (col 10, lines 28-33);

(38) FIG. 2 illustrates a few of the responses that a shopper can receive. If an 8 ounce

(oz.) size of a product is scanned, for example, the shopping system can alert the shopper that a

larger size is on sale, as in message 250. If a shopper has entered into a personal profile a

preference for reduced fat foods, and if a tomato sauce is <u>scanned</u> having a certain fat content, the system can alert the shopper that a comparable brand is available with less fat, as in message 252. The shopper then has an opportunity to replace the first article with the second article, using the <u>scanner</u> control buttons to delete the first article. The shopper can also invoke one of the functions, such as Show Me, as shown in message 254. The shopper is then presented with a list of descriptions of available Show Me functions, for example, best price 256, least salt 258, name brand 260, store brand 262 and new product 272. The list can include button icons, shown as dots, to reinforce the need to press the screen to select the function (col 13, lines 15-34);

(44)   As the shopper is moving through the shopping venue and browsing products, the shopper can use the <u>scanner</u> to read the Universal Product <u>Code (UPC) bar codes</u> of products they are interested in, or can <u>scan</u> shelf labels having the product <u>UPC bar code,</u> and request information on these or similar or associated products (col 14, lines 27-34);

(23)   In the environment of a shopping venue for video rentals, the screen can be used to enable shoppers to view movie trailers prior to rental. In this example, the movie trailers represent the data in the supplemental data base. From the marketing side, the exhibition of movie trailers can also be automatic and based on the shopper's rental <u>history</u> and user <u>profile.</u> A shopper might request, for example, that trailers for all new releases, or all new science fiction releases, be displayed every time the shopper checks out a mobile apparatus. In such a shopping venue, the bar code <u>scanner</u> can be used as the movie and movie trailer selection tool, as the shopper moves up and down the aisles" (col 10, lines 8-20).

Sloane discloses specialized actions depending on particular or qualified shoppers and also tracking what items are scanned for inspection by a user:

"(30) In certain kinds of shopping venues, the mobile apparatus can also be provided with a device, not shown in FIG. 2, for deactivating electronic article surveillance security tags. While this might seem to entail some risk, such a function can be useful under certain circumstances. In accordance with an inventive arrangement, certain articles can be provided with two levels or stages of security, for example represented by two security tags. A first level would monitor exits from the shopping venue to prevent an article from being stolen, whereas a second level can enable articles to be removed from a special display area for closer inspection within the shopping venue. With regard to security concerns, this function can be reserved for only qualifying shoppers and the deactivation can be transmitted to the interactive system so that the retailer is advised that a particular article has been selected for inspection by a particular shopper" (col 11, lines 25-41).

The Amendment dated 1/13/05 recognizes that "Sloane discloses printing of product coupons". Sloane does not explicitly disclose dynamically changing a characteristic of the product coupon or to dynamically change an amount of a product coupon.

However, Barnett discloses changing the value of a coupon offered to a user based on known information concerning that user (col 13, lines 24-45) and targeting a user with certain coupons based on known information about that user (col 12, lines 37-65) and that coupons can be utilized for product/items that have scannable UPC numbers (Fig. 5, item 82 'item's UPC number).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Barnett's dynamic coupons to targeted users to Sloane's presenting coupons to targeted users. One would have been motivated to do this in order to increase the likelihood that a user will be interested in or utilize a coupon for product purchase.

Sloane discloses maintaining a customer account database or displaying the account data on a customer's scanning terminal as recited in claim 41. Sloane discloses customer information with various account attributes, correlated to at least one of present customer coupons, future customers coupons, and present customer scanning points.

Sloane discloses a customer account database or displaying the account data on a customer's scanning terminal as recited in claim or displaying the point balance of account and also displaying information on discounts or coupons:

"(42) Examples of information which can be requested by shoppers include: the point balance in the shopper's frequent shopper account; the store aisle location of a specific product; a meal plan that provides information, such as a low-calorie dinner; a replenishment reminder of frequently purchased products which have not been purchased recently; and, the amount of money the shopper has saved this week, this month or year-to-date, using the system (col 14, lines 10-19);

(39) One such marketing initiative is to display for the shopper a list of all articles displayed along the aisle which are marked down as specials or for which cents-off coupons are available. An audible message can be presented to the shopper which alerts the shopper to observe the screen for a list of all such articles and the price reduction" (col 13, lines 45-60).

Sloane discloses awarding a user with discounts for items that have been scanned and then purchased:

"(54) The interactive voice response feature of the system also enables the shopper to use speech to produce desired results. For example, when the shopper is informed that the manufacturer is offering a 50 cents ($ 0.50) off electronic coupon for a <u>scanned</u> item, the system can ask the shopper to say "Yes" to accept the <u>discount,</u> and would then add the item to the purchase total at the lower price. In another example, when the shopper is informed there is a $2.00 refund offer on purchasing two of a product, the system will ask the shopper to say "Yes" to accept the offer, and the required mail-in form can be printed out at the storage rack when the mobile apparatus is checked in" (col 15, lines 45-56).

Also, Sloane discloses that customers are rewarded with points for desirable behaviors (frequent shopper point totals) and that it is desirable for customers to scan items for the purpose of tracking what items the user has scanned and that the items that a user scans are tracked and that customers are rewarded for purchasing items after items have been scanned.

Therefore, it would be obvious that Sloane can reward users for scanning items. Sloane would be motivated to do this to encourage users to scan items.

Additionally, Sloane discloses utilizing coupons:

"(47) The shopper can also use the scanner to input information from paper <u>coupons, for example, a coupon</u> issued for the scanned article. The system can match the article with the <u>coupon,</u> and if acceptable, credit the <u>coupon</u> against the purchase price in the running total. If

the coupon is doubled or tripled, the system can take that information into account in

determining the credit (col 14, lines 55-61).

(54) The interactive voice response feature of the system also enables the shopper to use

speech to produce desired results. For example, when the shopper is informed that the

manufacturer is offering a 50 cents ($ 0.50) off electronic coupon for a scanned item, the system

can ask the shopper to say "Yes" to accept the discount, and would then add the item to the

purchase total at the lower price. In another example, when the shopper is informed there is

a $2.00 refund offer on purchasing two of a product, the system will ask the shopper to say

"Yes" to accept the offer, and the required mail-in form can be printed out at the storage rack

when the mobile apparatus is checked in" (col 15, lines 45-55).

And, Barnett discloses utilizing future coupons:

"Some consumers use coupons on a fairly random basis. These consumers tend not to

keep coupons for future use, but will review coupons available just prior to shopping to see if

any of them cover products they plan to buy or if there are any for new or improved products of

interest. More organized coupon users maintain some form of storage system to keep coupons

for future use. These consumers often clip coupons regularly from all available sources, and

often have coupon filing systems by product category. They will also review their coupons

regularly, discarding unused coupons which have expired" (col 1, lines 31-45).

Sloane does not explicitly disclose that future coupons are not presently redeemable.

However, Fajkowski disclose current coupons presently redeemable and future coupons

that are not presently redeemable:

"(11) As discussed more fully below, the periphery device, among other functions, will also be able to transmit data on future manufacturer coupons to the coupon card or place directly onto the coupon card coupons which will be ready for immediate use (col 4, lines 59-64).

(12) Additionally, the server will transfer to the periphery device information that is intended for eventual loading by the periphery device onto coupon cards (e.g. information on future coupons or coupons for immediate use as discussed above) (col 5, lines 9-15).

(26) In process step 95, all redemption requirement data in periphery device 100 is transmitted to RAM means 23 of coupon card 1, wherein all previously existing redemption requirement data in RAM means 23 is overwritten with the redemption requirement data of periphery device 100. Simultaneously, all records in coupon card 1 will be rewritten with an "in card at last insertion" marker. This marker will track how many times a record has been read by a periphery device without a coupon associated with that record being redeemed. In addition to redemption requirement data for existing coupons, redemption requirement data for coupons manufacturers will be publishing in the future will also be transmitted to RAM means 23 of coupon card 1 (step 96) while periphery device 100 displays an "ADDING TEXT" or similar message on display screen 102 (col 16, lines 35-50).

(44) Another function of clearinghouse 300 will be to maintain a database of redemption requirement data for all coupons offered and all coupons to be offered by manufacturers and retailers. This information will be obtained from manufacturers and retailers when they register with the provider of the coupon card services. Clearinghouse 300 will periodically transmit redemption requirement data for future coupons to periphery devices 100 through local

servers 200. From periphery device 100, the updated redemption requirement data can be

entered into coupon card 1 of customers even before the paper coupons are published. Thus

when the paper coupons are published and the bar codes appearing thereon are scanned into

coupon card 1, the redemption requirement data will appear on the display screen 3 of coupon

card 1 and the customer will be allowed to manipulate the coupon record as described above

(col 23, lines 50-65);

[Claim] 27. A system according to claim 25, wherein said periphery device receives

updated redemption requirement data from a database located remotely from a

store wherein said periphery is located, said updated redemption requirement

data corresponding to coupons to be published at a future date" (col 35, lines 5-25).

Fajkowski further disclose future coupons not presently redeemable and dynamically

adjustable coupons:

"(49) The present invention provides a novel solution to this present disadvantage by

allowing a coupon already scanned into coupon card 1 to change in value. Since a manufacturer

participating in the system will receive prompt information on consumer reaction to a coupon

through the redemption reports issued by clearinghouse 300, the manufacturer can rapidly

respond to redemption rates and market feedback and "reuse" the coupon by increasing its value

nationally, regionally, or in a more specific locale. If the manufacturer wishes to increase the

coupon's value, clearinghouse 300 will, on instructions from the manufacturer, create a new bar

code and new redemption requirement data showing an increased value for the coupon's

redemption. This new bar code and redemption requirement data is then transmitted to

periphery devices 100 by server 200 along with other redemption requirement data for future

coupons. When a coupon card is placed in periphery device 100, the original bar code of

the coupon which is to be increased in value will be located and the new bar code along with the

new redemption requirement data will replace the previous bar code and redemption

requirement data. To make the coupon card user aware of the increase in the value of the

coupon, the coupon record will contain a marker which will display the coupon on display

screen 3 of coupon card 1 during the next start-up (after turning coupon card 1 on) with an

appropriate message advising the user of the coupons increase in value. An example of such

a message could be the "NOW" message 131 preceding the new value of the coupon as seen in

FIG. 16. Of course, in the event the manufacture chooses to decrease the value of the initial

coupon, the same method could be applied. This method allows a manufacturer to continually

restimulate the coupon card user to buy the product covered by the coupon each time the

manufacture raises the coupon's value. Alternatively, a value increase in a coupon could be

based on the length of time a coupon has remained in coupon card 1 without being used. If the

coupon card user does not redeem the coupon within a certain time period, the value could be

increased to give him added incentive to use the coupon" (col 25, line 35-col 26, line 8).

Fajkowski further discloses that coupons can be utilized as rewards (col 15, lines 15-20).

Therefore, it would have been obvious to one having ordinary skill in the art at the time

the invention was made to add Fajkowski's coupons that can presently be redeemed and future

coupons that can not presently be redeemed to Sloane and Barnett's coupons and future coupons.

One would have been motivated to do this in order to provide further information of interest to

the user concerning coupons available to the user.

Response to Arguments

Applicant's arguments with respect to claims 41, 42, and 109-124 have been considered but are moot in view of the new ground(s) of rejection. Please particularly note the section added above in the rejection of the Independent claims that starts with, "Additionally, Sloane discloses utilizing coupons. . ." thru to the end of the rejection.

Also, Examiner notes that a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Examiner further notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

And, Examiner notes that while specific references were made to the prior art, it is actually also the prior art in its entirety and the combination of the prior art in its entirety that is being referred to. Also, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413,

208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir.

1986).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this

Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The

examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arthur Duran
Patent Examiner
12/6/2005